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Nos. 577-581, 585-587

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In the Supreme Court of the United States

OCTOBER TERM, 1935

BECKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

A. B. DORR, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

UNITED RICE MILLING PRODUCTS CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

LEVY RICE MILLING CO., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

BRIEF IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 577

RICKERT RICE MILLS, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

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No. 578

A. B. DORE, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

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No. 579

UNITED RICE MILLING PRODUCTS CO., INC., petitioner

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

No. 580

BATON ROUGE RICE MILL, INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

---

No. 581

T. SIMON, PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

---

No. 585

LEVY RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

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No. 586

FARMERS RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

No. 587

NOBLE-TROTTER RICE MILLING CO., INC., PETITIONER

v.

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING United States Collector of Internal Revenue for the District of Louisiana, respondent

---

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND MOTION FOR INJUNCTION TO PRESERVE STATUS QUO

BRIEF IN OPPOSITION

OPINIONS BELOW

The United States District Court for the Eastern District of Louisiana, New Orleans Division, rendered no opinion and the order and *per curiam* opinion of the United States Circuit Court of Appeals for the Fifth Circuit, denying petitioners' motions for preliminary injunctions has not been officially reported.

JURISDICTION

These cases were consolidated for hearing in the District Court (R. 58).[1] The judgments and de-

[1] Reference is hereafter made to the record in case No. 579, *United Rice Mill Products Company, Inc.*, v. *Rufus W. Fontenot*, etc. The records, petitions for writ of certiorari, and motions for injunctions to preserve the status quo in Nos. 577–581 and Nos. 586–587, except as to dates and amounts, are practically identical in substance and in paging. The record in No. 585 is substantially identical except as to certain matters not material.

crees of the District Court were entered October 28, 1935. Petitions for writs of certiorari were filed November 11, 1935, and in connection therewith motions for injunctions to preserve the status quo were filed on the same day.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the constitutionality of processing taxes levied under the Agricultural Adjustment Act, as amended, may be tested in a suit for injunction.[2]

STATUTES INVOLVED

The pertinent provisions of the statutes involved are set forth in the Appendix, *infra*, pp. 19–26.

STATEMENT

Petitioners, all of whom are rice processors, filed bills of complaint in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, against respondent, Rufus W. Fontenot, Individually and as acting United States Collector of Internal Revenue for the District of Louisiana, to restrain and enjoin respondent, temporarily and permanently, from assessing or collecting any processing taxes levied for

[2] Petitioners also ask an injunction to preserve the status quo. Should the Court deny the petitions for certiorari, there would be no occasion for granting the injunctions. There is no necessity, therefore, of discussing said motions.

the month of September 1935, and for subsequent months, under and pursuant to the Agricultural Adjustment Act, as amended August 24, 1935, together with any interest or penalty or imposition of liens.

Petitioners' prayers for preliminary injunctions (R. 24), and respondent's motions to dismiss the bills of complaint (R. 54), were heard by the District Court on October 28, 1935, on which date the District Court denied the applications for preliminary injunctions and granted the motions to dismiss the bills, and thereupon (R. 79), entered final decrees dismissing said bills of complaint.

On October 29, 1935, the District Court denied motions for injunctions pending the appeals (R. 79–80), and allowed petitioners' appeals to the Circuit Court of Appeals for the Fifth Circuit (R. 80). The praecipe for records on appeal were filed in the Circuit Court of Appeals for the Fifth Circuit on October 31, 1935 (R. 83). On November 5, 1935, petitioners' motions for injunctions pending appeal were denied by the Circuit Court of Appeals (R. 97). Judges Foster, Sibley, and Strum, on November 5, 1935, in denying said applications, entered the following *per curiam* opinion and order in each case (R. 97):

> BY THE COURT: On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy

at law to recover back any taxes illegally exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be DENIED.

On November 11, 1935, petitioners filed in this Court their petitions for writs of certiorari and at the same time filed herein their motions for injunctions to preserve the status quo.

ARGUMENT

In the District Court the motions for preliminary injunctions and motions to dismiss the bills were heard together. By final judgments and decrees entered October 29, 1935, the District Court dismissed the bills and denied the motions for preliminary injunctions. On November 5, 1935, motions for injunctions pending appeals were denied by the Circuit Court of Appeals on the ground not only that petitioners had a remedy at law to recover taxes alleged to have been illegally exacted but on the further ground that the provisions of the Agricultural Adjustment Act, as amended, deprived the court of jurisdiction to grant injunctive relief (R. 97). The appeals from the final judgments of the District Court are still awaiting hearing in the Circuit Court of Appeals (R. 98).

No valid reasons have been assigned by petitioners for review of the decisions of the District Court. Petitioners have referred to the action of certain of the Circuit Courts of Appeals in granting stays

pending appeal. It does not appear that there are any conflicting decisions on the issue here involved. As yet, no Circuit Court of Appeals has passed upon the appeals pending before it involving the question here presented. The decision of the District Court is in accord with applicable decisions. *Snyder* v. *Marks,* 109 U. S. 189; *Bailey* v. *George,* 259 U. S. 16; *Phillips* v. *Commissioner,* 283 U. S. 589.

I

THE MAINTENANCE OF THESE SUITS IS PROHIBITED BY SECTION 3224, REVISED STATUTES

Since the beginning of our judicial system, this Court has recognized the general equity rule that collection of taxes may not be enjoined where an adequate remedy at law has been provided. *Matthews* v. *Rodgers,* 284 U. S. 521; *Stratton* v. *St. L. S. W. Ry.,* 284 U. S. 530. See also *State Railroad Tax Cases,* 92 U. S. 575. This was merely the application to the field of taxation of a cardinal principle of equity jurisprudence, which was given legislative sanction in Section 267 of the Judicial Code.

This rule applies with particular force to Federal taxes. *Nichols* v. *United States,* 7 Wall. 122; *State Railroad Tax Cases, supra; Snyder* v. *Marks,* 109 U. S. 189; *Corbus* v. *Gold Mining Co.,* 187 U. S. 455; *Dodge* v. *Osborn,* 240 U. S. 118; *Graham* v. *duPont,* 262 U. S. 234. This Court has recognized that the prompt collection of the revenue is one of the most important functions of Government, be-

cause taxes are "the sole means by which sovereignties can maintain their existence." *Bank of Commerce* v. *Tennessee,* 161 U. S. 134, 146. Accordingly, it has recognized "the right of the United States to collect its internal revenue by summary administrative proceedings." *Cheatham* v. *United States,* 92 U. S. 85, 88, 89. See also *Phillips* v. *Commissioner,* 283 U. S. 589, 595. Section 3224, Revised Statutes, which was enacted in 1867, is declaratory of this latter principle and has been given effect repeatedly.

The doctrine of "pay first and litigate later" is an elementary principle in our system of taxation. It was upon the basis of this summary procedure for the collection of taxes that the Government has provided that which has come to be known as a "system of corrective justice" recognized in the *State Railroad Tax Cases, supra,* wherein this Court said (p. 613):

> The government of the United States has provided, both in the customs and in the internal revenue, a complete system of corrective justice in regard to *all taxes imposed by the general government,* which in both branches is founded upon the idea of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid by suit against the collecting officer. *But there is no place in this system for an application to*

> *a court of justice until after the money is paid.* (Italics supplied.)

Cf. *United States* v. *Jefferson Electric Co.*, 291 U. S. 386.

Whatever exceptions there are to the application of Section 3224, Revised Statutes, these cases do not fall within those exceptions.[3] The effect of this Section as construed and applied by this Court may be summed up as follows: If the assessment is of a tax for revenue purposes as distinguished from a penalty made and attempted to be enforced by the proper revenue officers of the United States, upon articles within the purview of the taxing statute, under color of their offices, its collection cannot be stayed by an injunction. *Cheatham v. United States, supra; State Railroad Tax Cases, supra; Snyder* v. *Marks, supra; Pacific Whaling Co.* v. *United States,* 187 U. S. 447; *Corbus* v. *Gold Mining Co., supra; Dodge* v. *Osborn, supra; Dodge* v. *Brady,* 240 U. S. 122; *Bailey* v. *George, supra; Graham* v. *duPont, supra; Phillips* v. *Commissioner, supra.*

All of the results predicted by petitioners in their bills can be avoided by the payment of the tax

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[3] *Hill v. Wallace*, 259 U. S. 44; *Lipke* v. *Lederer*, 259 U. S. 557; *Regal Drug Corp.* v. *Wardell*, 260 U. S. 386; *Miller* v. *Nut Margarine Co.*, 284 U. S. 498, are not to the contrary. They rest upon their own peculiar facts. The first three cases involved penalties. See *Graham v. duPont, supra.* In the *Nut Margarine Co.* case the Court found that no tax was imposed by law upon the article sought to be taxed. These cases are the only instances, since the enactment in 1867 of Section 3224, in which this Court has sanctioned exceptions to its prohibition.

sought to be enjoined. Section 3224 is an inhibition against the maintenance of these suits.

II

PETITIONERS' REMEDY AT LAW IS PLAIN, ADEQUATE, AND COMPLETE

Petitioners contend (Br. 23) that the provisions of Section 21 (d)[4] (*infra,* p. 22), which require certain proof as a condition to the refund of taxes if held invalid, are unconstitutional. Section 21 (d) provides that a claimant must establish "to the satisfaction of the Commissioner of Internal Revenue", after opportunity and notice for hearing, that—

> * * * neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. * * *

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[4] Added by Section 30 of the Act of August 24, 1935 (Public, No. 320, 74th Con., 1st Sess.)

This Court, in construing a similar statute, in *United States* v. *Jefferson Electric Co.*, 291 U. S. 386, said (p. 402):

> We do not perceive in the restriction any infringement of due process of law. If the taxpayer has borne the burden of the tax, he readily can show it; and certainly there is nothing arbitrary in requiring that he make such a showing. If he has shifted the burden to the purchasers, they and not he have been the actual sufferers and are the real parties in interest; * * *.

Congress in the Agricultural Adjustment Act, as amended, has recognized and applied the principles announced by this Court in that decision.

The records in these cases consist of petitioners' bills of complaint and respondent's motions to dismiss. It is urged by petitioners (Br. 29) that since the cases were heard on motions to dismiss the bills of complaint, all allegations made therein must be accepted as true. Petitioners contend that the bills allege that it is impossible for any rice processor to prove whether or not the tax or any part thereof has been passed on, passed back, or borne by it. It is submitted that the conclusions set forth in the bills of complaint are insufficient to show that compliance with Section 21 (d) is impossible. A motion to dismiss, like a demurrer, admits only facts well pleaded. As stated by this Court in *Pacific States Box and Basket Co.* v. *White* (November 18, 1935):

> The burden is not sustained by making allegations which are merely the general conclusions of law or fact.

In this connection the attention of the Court is invited to the provisions of Section 15 (c) and 17 (a) of the Act, *infra* (p. 19). These sections provide for refunds or credits of taxes upon articles processed from basic commodities subjected to the processing tax. Pursuant to the Act the Secretary of Agriculture, with the approval of the President, has prescribed regulations fixing conversion factors for such articles to establish the amount of such refunds. Conversion factors so fixed for articles processed from rice have been adopted by the Secretary of the Treasury in Treasury Decisions 4565 and 4586, promulgated July 10, 1935, and September 9, 1935, respectively, to establish the amount of refunds due with respect to articles processed from rice. The annual report of the Commissioner of Internal Revenue for the fiscal year ending June 30, 1934, discloses that during the fiscal year covered by the report 45,278 claims for refunds or credits under Sections 15 (c) and 17 (a) were filed with the Commissioner of Internal Revenue. Of these claims 14,878, aggregating $3,267,186.34, were allowed. On hand pending consideration on June 30, 1934, were 28,034 claims aggregating $22,160,211.78. No report has as yet been issued as to the number of such claims received or acted upon during the fiscal year 1935.

We submit that the refunds in other industries accepted on the theory that the amount of the processing tax can be allocated to individual products as a part of their cost, the finding by the Secretary of Agriculture that similar allocation is practicable for rice, and the adoption of this finding by the Secretary of the Treasury for refund purposes raise an inference that it is not impossible to determine what portion, if any, of the processing tax on rice is passed on to purchasers of the products resulting from the processing of rice.

When the allegations of the bill are examined in the light of the material above adverted to, and the reasonable inference to be drawn therefrom, it is submitted that the allegations which are relied upon to establish inadequacy of remedy do no more than show an insufficiency of proof in these particular cases. As stated in *Burnet* v. *Houston,* 283 U. S. 223, 228:

> The impossibility of proving a material fact, upon which the right to relief depends, simply leaves the claimant upon whom the burden rests with an unenforcible claim, a misfortune to be borne by him, as it must be borne in other cases, as the result of a failure of proof.

It is well settled that failure of proof is not sufficient ground to justify injunctive relief. See *Rees* v. *City of Watertown,* 19 Wall. 107, 124; *Thompson* v. *Allen County,* 115 U. S. 550, 554; *Newell* v. *Nichols,* 75 N. Y. 78, 90; *Marlin Fire Arms Co.* v. *Shields,* 171 N. Y. 384, 391.

III

THE MAINTENANCE OF THESE PROCEEDINGS IS PROHIBITED BY SECTION 21 (A) OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

Clearly, Section 21 (a)[5] of the Agricultural Adjustment Act, as amended, broadens the scope of Section 3224 and is a specific prohibition against granting injunctive relief with respect to the collection of the processing taxes here involved. It is contended, however, that this broadening of the scope of Section 3224 violates the principle of the separation of powers (Section 2 of Article III of the Constitution), in that it is an undue interference by the legislative branch of the Government with the judicial power.

Under applicable decisions of this Court this contention would seem to be without merit. In *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 234, it was held that Congress could "give, withhold or restrict" such jurisdiction of the inferior Federal courts "at its discretion * * *. And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part." See also *Cary* v. *Curtis*, 3 How. 235.

Since there is no vested right to an injunction against the collection of taxes claimed to have been

[5] Added by Section 30 of the Act of August 24, 1935 (Public, No. 320, 74th Cong., 1st Sess.). This section expressly forbids the maintenance of any action having the purpose or effect of preventing the collection of taxes accruing after August 24, 1935, under the Agricultural Adjustment Act, *infra*, p. —.

illegally exacted (*Smallwood* v. *Gallardo,* 275 U. S. 56), petitioner cannot complain because of the provision of Section 21 (a).

IV

PETITIONERS WILL BE UNJUSTLY ENRICHED IF PAYMENT OF THE TAX IS WITHHELD

The object of Congress in limiting refunds and credits in Section 21 (d) to that portion of the tax actually borne by the processor is clear. As stated in the report of the conferees, H. Rep. No. 1757 (p. 32): "This provision embodies a doctrine that no taxpayer should be unjustly enriched by a return of the tax if, in fact, he has not borne it." This principle has been consistently applied by the courts in cases involving Federal taxation. *United States* v. *Jefferson Electric Co., supra; White* v. *Stone,* 78 F. (2d) 136 (C. C. A. 1st), certiorari denied, October 14, 1935; *Champ Spring Co.* v. *United States,* 47 F. (2d) 1 (C. C. A. 8th), certiorari denied, 283 U. S. 252; *Standard Oil Co.* v. *United States,* 5 Fed. Supp. 975, 985 (C. Cls.). We submit that to permit petitioners to maintain their suit for injunctive relief would defeat this policy of Congress and would be inconsistent with applicable principles of equity. To the extent that petitioners may be collecting from their customers the amount of any processing tax due upon the processing of the products purchased by such customers,

any processing taxes retained and not paid by petitioners would in fact constitute unjust enrichment. The extent to which petitioners are passing on the processing tax should be determined in the manner provided by Congress in Section 21 (d).

If petitioners are permitted to obtain temporary or permanent injunctions against the collection of taxes, prior to a determination of their unconstitutionality and a subsequent threat to collect, either the petitioner or some contract beneficiary of petitioner would be unjustly enriched. When the tax is paid, it is generally passed on to the first and subsequent purchasers. Since the ultimate consumer is not in a position to recover, should the tax be held unconstitutional, there would be in this instance a receipt by the Government of invalid taxes. If on the other hand the tax is not paid, because collection is enjoined, or payment is directed to be made into court, either the processor or some purchaser in the chain of title (provided the processor agrees to reimburse such purchaser if the processor does not ultimately pay) gains the tax, although it has already been included in the price charged a purchaser. As between the Government and a taxpayer or his purchaser, it is equitable for the Government to have the advantage of the tax payment. The situation may perhaps be likened by way of analogy to the doctrine of escheat.

Equity follows the law and requires a suitor to show clearly his right to equitable relief. It was stated in *United States* v. *Jefferson Electric Co., supra* (p. 400):

> We cannot assent to the view that a court may give a judgment awarding to taxpayer a refund without inquiring whether he has borne the burden of the tax or has reimbursed himself by collecting it from the purchaser.

Under Section 21 (d) of the Act, as amended, petitioners are limited in their recovery, in the event that the processing tax involved is declared to be unlawfully collected, to that portion of the tax they have borne. They are rightly denied recovery of that portion borne by the consumer or the producer. This limitation is for the express purpose of preventing recovery by petitioners of those processing taxes to which they are not in equity and good conscience entitled.

Should this Court deny the petitions for certiorari, there would, of course, be no occasion for considering petitioners' motions for a temporary injunction to preserve the status quo. No basis appears for granting the motions unless they be granted as incidental to the issuance of writs of certiorari to review the orders of the courts below.

CONCLUSION

Wherefore it is respectfully submitted that the petitions for writs of certiorari and the motions to preserve the status quo should be denied.

STANLEY REED,
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FRANK J. WIDEMAN,
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ANDREW D. SHARPE,
M. H. EUSTACE,
EDWARD H. HORTON,
Special Assistants to the Attorney General.

NOVEMBER 1935.

APPENDIX

Judicial Code:

SEC. 262. *Power to issue writs.* The Supreme Court and the district courts shall have power to issue writs of *scire facias.* The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law (U. S. C., Title 28, Sec. 377).

* * * * *

SEC. 267. *Suits in equity, when not sustainable.* Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law (U. S. C., Title 28, Sec. 384).

Revised Statutes:

SEC. 3224. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. (U. S. C., Title 26, Sec. 1543.)

Agricultural Adjustment Act, c. 25, 48 Stat. 31, Sections 15 (c), 17 (a), 19 and 21, as amended by the Act of August 24, 1935, Public, No. 320, 74th Cong., Sections 29 and 30, respectively.

SEC. 15. * * *

(c) Any person, including any State or Federal organization or institution, delivering any product to any organization for

charitable distribution, or use, including any State or Federal welfare organization, for its own use, whether the product is delivered as merchandise, or as a container for merchandise, or otherwise, shall, if such product or the commodity from which processed is under this title subject to tax, be entitled to a refund of the amount of any tax due and paid under this title with respect to such product so delivered, or to a credit against any tax due and payable under this title of the amount of tax which would be refundable under this section with respect to such product so delivered: *Provided, however,* That no tax shall be refunded or credited under this section, unless the person claiming the refund or credit establishes, in accordance with regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury (1) that he has not included the tax in the price of the product so delivered or collected the amount of the tax from the said organization, or (2) that he has repaid, or has agreed in writing to repay, the amount of the tax to the said organization. The word "State" as used in this section shall include a State and any political subdivision thereof.

SEC. 17.(a) Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this title, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be

allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax. In the case of rice, a tax due under this title which has been paid by a tax payment warrant shall be deemed for the purposes of this subsection to have been paid; and with respect to any refund authorized under this section, the amount scheduled by the Commissioner of Internal Revenue for refunding shall be paid, any provision of law notwithstanding. In the case of sugar beets and sugarcane, this subsection shall be applicable to exports of products thereof to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam only if this title with respect to sugar beets and sugarcane is not made applicable thereto. The term " product " includes any product exported as merchandise, or as a container for merchandise, or otherwise.

SEC. 19. * * *

(b) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title:

* * * * *

SEC. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing

or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the court's order.

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(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article proc-

essed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish, to the satisfaction of the Commis-

sioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund, or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such

claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy.

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(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

Revised Statutes:

SEC. 3226. [As reenacted without change by Sec. 1113 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9, and as amended by Sec. 1103 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 169.]

No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously

or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which suit or proceeding relates. (U. S. C., Title 26, Sec. 1672.)

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